

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
CASE NO. 1:18-cv-181-MOC-DLH

NANCY SMITH, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
ALEX AZAR, in his official capacity )  
as Secretary of the U.S. Department )  
of Health and Human Services, )  
 )  
Defendant. )  
\_\_\_\_\_

**DEFENDANT’S UNOPPOSED MOTION FOR EXTENSION OF TIME TO  
ANSWER OR OTHERWISE RESPOND TO COMPLAINT**

Defendant hereby moves the Court to extend the time to answer or otherwise respond to the Complaint from August 31, 2018, until November 2, 2018. Plaintiff consents to this extension. Defendant requests this extension for the following reasons:

This case seeks judicial review of two Medicare Appeals Council (“MAC”) coverage decisions. In order to properly respond to the Complaint, the undersigned needs to obtain and review the certified administrative record underlying this case. Shortly after being assigned this matter, the undersigned requested that the MAC

assemble and certify the administrative record. The MAC estimates that it will not be able to complete these steps until sometime in mid-September 2018. According to the U.S. Department of Health and Human Services (“HHS”), the process of assembling and certifying the administrative record in this case may take even longer due to the widely reported backlog of cases at the MAC. *See, e.g., Maxmed Healthcare, Inc. v. Price*, 860 F.3d 335, 344 (5th Cir. 2017) (“Hundreds of thousands of Medicare appeals are backlogged in agency proceedings”). After the undersigned receives the certified administrative record, time will then be needed to review the record to determine how to properly respond to the Complaint, including whether this matter can be resolved without further litigation.

For the foregoing reasons, Defendant requests an extension of time to respond to the Complaint, through and including November 2, 2018. The undersigned has conferred with counsel for Plaintiff, and Plaintiff consents to this requested extension.

Respectfully submitted this 22nd day of August, 2018.

R. ANDREW MURRAY  
UNITED STATES ATTORNEY

**s/Jonathan D. Letzring**  
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**CERTIFICATE OF SERVICE**

I hereby CERTIFY that on the date referenced above, I served a copy of the foregoing upon Plaintiff's counsel by electronic service through the Court's CM/ECF email notification system.

R. ANDREW MURRAY  
UNITED STATES ATTORNEY

**s/Jonathan D. Letzring**  
Jonathan D. Letzring  
Assistant United States Attorney